

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 09, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEMETRIOS VORGIAS,

Plaintiff,

v.

COMMUNITY HEALTH OF CENTRAL

WASHINGTON,

Defendant.

No. 1:21-CV-03013-SAB

PRETRIAL ORDER

The Court held a pretrial conference in the above-captioned matter on August 31, 2022 in Yakima, Washington. Plaintiff was represented by William Pickett. Defendant was represented by Catharine Morisset and Clarence Belnavis.

At the pretrial conference, the parties stated that they stipulated and agreed to the Court signing and entering their proposed Joint Pretrial Order. Thus, the Court enters the parties' Joint Pretrial Order into the record.

Accordingly, **IT IS HEREBY ORDERED:**

I. **NATURE OF PROCEEDINGS AND STATEMENT OF
JURISDICTION**

The following facts are agreed upon by the parties and require no proof:

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332(a)(1), and 1367.

1 2. Plaintiff Demetrios Vorgias (“Plaintiff”) filed a lawsuit against
2 Defendant Community Health of Central Washington in the United States District
3 Court in the Eastern District of Washington in Yakima, Washington, on February
4 2, 2021.

5 3. The Complaint alleged three causes of action: (1) violation of the
6 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; (2) violation of the
7 Washington Law Against Discrimination; and (3) breach of contract. ECF No. 1 at
8 4.

9 4. On March 28, 2018, Plaintiff signed a first year Resident Contract in
10 Family Medicine with Defendant.

11 5. The term of the contract was June 25, 2018, through June 24, 2019.

12 6. The residency contract could be terminated by either Plaintiff or
13 Defendant upon 30 days’ written notice.

14 7. Plaintiff was employed by Defendant from June 25, 2018 to May 1,
15 2019.

16 II. PLAINTIFF’S CONTENTIONS

17 Plaintiff’s contentions as to disputed issues are as follows:

18 1. Defendant knew that Plaintiff suffered from mental
19 disabilities/impairments, including Attention Deficit Hyperactivity Disorder
20 (“ADHD”) and Generalized Anxiety Disorder (“GAD”).

21 2. Defendant knew that Plaintiff’s impairments necessitated reasonable
22 workplace accommodations.

23 3. Defendant required Plaintiff undergo medical examination to
24 determine (1) the extent of impairments/disabilities; and (2) which reasonable
25 accommodations would assist Plaintiff in succeeding in Defendant’s residency
26 program.

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1 4. Defendant failed to follow its own formal remedial procedures
2 regarding the termination of Plaintiff's employment from the Community Health
3 of Washington residency program.

4 5. Defendant failed to engage in the interactive process regarding
5 reasonable accommodation for Plaintiff.

6 6. Defendant prematurely and improperly terminated Plaintiff despite the
7 availability of reasonable accommodations to address disabilities and/or
8 impairments.

9 7. Defendant retaliated against Plaintiff as a result of his participation to
10 seek reasonable workplace accommodations for disabilities/impairments.

11 8. Plaintiff's reasonable workplace accommodations did not create an
12 undue burden for Defendant. Plaintiff took reasonable steps to mitigate the harm
13 caused by Defendant's discriminatory actions.

14 III. **DEFENDANT'S CONTENTIONS**

15 Defendant's contentions as to disputed issues are as follows:

16 1. Plaintiff graduated from medical school in 2016.

17 2. Medical residents are placed into residency programs through a
18 matching process run by the National Resident Matching Program (NRMP).

19 3. Briefly, each applicant ranks the residency programs in the order of
20 their preference, and each residency program does the same with applicants.
21 NRMP then matches the applicants to the residency programs using an algorithm.

22 4. In 2016, Plaintiff participated in the match process but was not
23 selected by any residency program as a match.

24 5. In 2017, Plaintiff participated in the match process but was not
25 selected by any residency program as a match.

26 6. In 2018, Plaintiff participated in the match process and matched with
27 CHCW.

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1 7. Plaintiff's Resident Contract provided that extended personal leave
2 could be granted at the discretion of the Program Director for compelling personal
3 reasons.

4 8. Plaintiff never requested extended personal leave during his
5 employment with Defendant.

6 9. Each resident is assigned a Faculty Advisor.

7 10. The Faculty Advisor's role is to collect feedback and discuss it with
8 the resident.

9 11. A resident may request a change of Faculty Advisor once a year if
10 there are conflicts or discomfort in the relationship.

11 12. Plaintiff was assigned Dr. Caitlin Hill as a Faculty Advisor.

12 13. "Residents are subject to continuous performance evaluation, with
13 regard to the six core competencies: patient care, medical knowledge, practice-
14 based learning and improvement, interpersonal and communication skills,
15 professionalism, [and] systems-based practice."

16 14. The number-one goal of the CHCW resident evaluation system is to
17 "[a]ssure the safety of patients."

18 15. There are three levels of advancement in the CHCW residency
19 program: R1, R2, and R3.

20 16. "For advancement to the next level [*e.g.*, R1 to R2], acceptable
21 progress meeting milestones in the seven core competencies needs to be
22 documented. Additionally, the Resident must be judged competent to supervise
23 others (R1's and students), and to act with limited independence."

24 17. On September 17, 2018, Nurse Joy Gay reported to Dr. Hill,
25 Plaintiff's advisor, several concerns about Plaintiff, including that he asked her to
26 accompany him to an exam "to make sure he was doing it right," instead of asking
27 his attending doctor for help, that he asked about discharging a mother to be with
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1 her baby without knowing facts about the mother or baby; and that he “was unsafe
2 in the state of fatigue and frustration he was in.”

3 18. On October 1, 2018, Dr. Tiffany Mark reported her concerns about
4 Plaintiff to his Faculty Advisor, Dr. Hill, including that he showed up for rounds
5 late and not dressed appropriately; he did not complete his notes despite Mark
6 “spen[ding] hours with him on making sure he understood the work flows”; and he
7 failed to complete a physical exam on a patient because the patient was sleeping,
8 which Mark reported was “incredibly concerning.”

9 19. CHCW’s Committee Addressing Residents Experiencing Difficulty
10 (CARED) was formed to help residents who were struggling in the program.

11 20. In or around 2018, Plaintiff informed Dr. Hill that he was struggling
12 with the Electronic Medical Record (EMR) system “and that’s when I told her I
13 have ADHD, and this can make it a little more difficult.”

14 21. Plaintiff did not ask for any “specific” accommodations at the time.

15 22. Plaintiff told Dr. Hill about his ADHD “in the context of I need help
16 just making [the EMR system] do what I needed it to do.”

17 23. Dr. Hill also arranged for Plaintiff to get extra help with the EMR
18 system from senior residents, including Dom Nguyen, Tess Ish-Shalom, and
19 Tiffany Mark. Dr. Hill also worked with Plaintiff to help him learn the EMR
20 system, and she offered him additional training, which he rejected.

21 24. Plaintiff later sought help from senior residents on the EMR systems
22 “and figured it [the EMR system] out on my own.”

23 25. Plaintiff did not ask Drs. Miller, Pearson, and McCloud for any job
24 modifications because of the ADHD.

25 26. Plaintiff never asked Program Directors Dr. Russell Meier or Dr.
26 Micahlyn Powers or HR Director Laura McClintock for any accommodations
27 related to his ADHD.

28 27. On October 23, 2018, CARED discussed Plaintiff’s performance.

1 28. The committee reviewed both positive and negative feedback about
2 Plaintiff's performance.

3 29. CARED considered that both Dr. Katina Rue and Dr. MacLeod
4 expressed concerns about Plaintiff's medical knowledge.

5 30. CARED recommended placing Plaintiff on the first stage of the
6 citation process—a constructive citation.

7 31. Plaintiff received a Constructive Citation on October 23, 2018.

8 32. CARED recommended “[t]asking [Plaintiff] to find a system that
9 works for him in order to keep him organized.”

10 33. CARED also recommended asking Dr. Mark Bauman shadow
11 Plaintiff because of concerns about Plaintiff's interactions with patients.

12 34. On October 31, 2018, Dr. Bauman shadowed Plaintiff for more than
13 two hours.

14 35. Dr. Bauman reported back to Hill and others concerns he had with
15 Plaintiff's performance.

16 36. On November 14, 2018, Dr. Carlin Miller, an attending physician,
17 reported serious concerns about Plaintiff's performance to his advisor Dr. Hill,
18 including: (i) on the last day of the OB rotation, Plaintiff told Dr. Miller that he
19 still did not know how to do many things he should have known how to do at that
20 point; (ii) Plaintiff “showed a significant lack of ability to triage his day and get
21 things done in a timely manner”; (iii) it took Plaintiff a significant amount of time
22 to discharge two patients despite there being “very little to do to make it happen”;
23 (iv) Plaintiff “frequently ask[ed] questions that he should have known the answers
24 to or should have known where to get the information”; (v) Plaintiff failed to
25 complete physical exams on 6-8 patients despite seeing them in rounds.

26 37. Dr. Miller reported to Dr. Hill that “[i]n general there was a complete
27 lack of insight that he was performing well below expected level. I spent nearly the
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1 entire shift there, as long as we had anything active going on, because I did not feel
2 good about leaving the floor and him alone to manage it.”

3 38. To safely treat patients, it is crucial that doctors be able to self-
4 diagnose their own weaknesses and knowledge gaps so that they are able to
5 educate themselves or seek help when necessary.

6 39. On January 23, 2019, CARED met to discuss Plaintiff’s progress.

7 40. On January 24, 2019, Dr. Powers and Dr. Hill met with Plaintiff and
8 placed him on a Consequential Citation, which indicates “areas of concern
9 significant enough to require the Resident and faculty to develop a formal plan of
10 corrective action.”

11 41. The primary reasons for the Consequential Citation were concerns
12 about professionalism; lack of medical knowledge; concerns for patient safety and
13 decision making; and inappropriate interactions with female faculty, staff, and
14 peers.

15 42. CARED’s concerns about Plaintiff’s professionalism was based in
16 part on:

- 17 a. Plaintiff’s failure to complete required administrative tasks,
18 such as logging didactic attendance, procedure loggings, and
19 CKSAs [clinical knowledge, skills, and abilities];
- 20 b. Plaintiff’s failure to notify BHC that he was running late to a
21 shadowing opportunity;
- 22 c. Plaintiff’s lack of preparation for working the clinic and
23 knowledge of patients’ medical conditions before their visits;
- 24 d. Plaintiff’s inability to stay on time in the clinic and failure to
25 communicate with his preceptors, patients, and nursing team.

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1 43. CARED's concern about Plaintiff's lack of medical knowledge was
2 based in part on:

- 3 a. Plaintiff's failure to consistently take accurate patient histories,
4 perform physical exams, and develop a basis for differential
5 diagnosis and plan for outpatients and inpatients in both clinic
6 and hospital settings.
- 7 b. Plaintiff's failure to ask for supervision by appropriate
8 attending physicians when needed, and instead asking for
9 nursing supervision.

10 44. CARED's concerns for patient safety and decision making was based
11 in part on:

- 12 a. Plaintiff's documentation of an after-hours call from a patient
13 with chest pain and heart palpitations did not include that she
14 should call 911 instead of driving herself to the hospital.
- 15 b. Plaintiff documented that he performed a physical exam
16 without actually performing the exam, which Powers noted was
17 fraudulent.

18 45. Plaintiff's inappropriate interactions with female faculty, staff, and
19 peers, included that Plaintiff was overly familiar with women, called them "love,"
20 and commented on their physical appearance.

21 46. The Consequential Citation required Plaintiff to follow an action plan,
22 which included: (1) timely responding to messages, refill requests, and labs; (2)
23 arriving on time for clinic, shadow experiences, meetings, shifts, and rotations; (3)
24 completing didactic attendance logging, CKSA, and procedure logging by
25 February 21, 2019; (4) arriving at the family medicine clinic by 8 a.m. having
26 chart-prepped the night before; (5) being shadowed in the clinic by a faculty
27 member for the next month; (6) be evaluated by the Washington Physician Health
28 Program (WPHP) "to determine your fitness to practice in residency;" (7) make up

1 his failed Family Medicine rotation; (8) working closely with preceptors to
2 diagnose clinic patients; (9) contacting the Employee Assistance Program (EAP)
3 for help with the stress of residency; (10) receiving additional training on the
4 computer systems, and being excused from clinical duties to complete this training;
5 and (11) receiving additional shadowing and mentoring to help with workflows
6 and efficiency.

7 47. During the meeting to discuss this Consequential Citation and action
8 plan, Plaintiff did not raise that he had ADHD, an anxiety disorder, or any
9 impairment or that he needed an accommodation to perform his essential job
10 functions.

11 48. On February 4, 2019, Dr. Patrick Moran reported an incident that
12 occurred in September 2018. At an appointment for a transvaginal ultrasound
13 exam, the patient had her feet in stirrups with a sheet covering her legs. Before the
14 appointment, Dr. Moran had asked Plaintiff to stand by the wall and simply
15 observe the procedure on a screen, but in the exam, Plaintiff walked up to the
16 patient without being asked and pulled the sheet up over her knees. Dr. Moran
17 reported that this was highly inappropriate behavior and that it caused the patient to
18 feel uncomfortable.

19 49. Dr. Moran also reported to Hill that Plaintiff “had not prepared at all
20 in terms of knowing which studies his patients needed, what the indications were
21 nor what elements of the studies were. This is atypical, as the residents have
22 several resources spelled out for them—including the survival guide, which just
23 happened to contain virtually all of the information he needed to be successful on
24 that day.”

25 50. During Plaintiff’s second Family Medical Service (FMS) rotation,
26 CHCW assigned Dom Nguyen, a senior resident, to work with Plaintiff to help him
27 identify where he was struggling and how to improve those areas.
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1 51. Plaintiff believed Nguyen made up his mind about Plaintiff too
2 quickly and was not helpful.

3 52. Plaintiff responded by avoiding Nguyen and told Nguyen “you are not
4 helping me.”

5 53. Dr. Nguyen responded by trying to help Plaintiff.

6 54. Dr. Nguyen also provided feedback to the CARED committee after
7 shadowing Plaintiff for three half days. Nguyen reported serious concerns with
8 Plaintiff’s poor insight into what was causing his performance issues; poor medical
9 knowledge; inattention to detail; not following Nguyen’s coaching and suggestions
10 to improve his performance; and not doing the work necessary to improve his
11 performance, *i.e.*, being lazy.

12 55. On February 13, 2019, Dr. Ragina Lancaster provided Dr. Hill
13 feedback about Plaintiff. She expressed serious concerns about Plaintiff’s (1)
14 communications with patients, patients’ family, social workers, and other staff and
15 (2) medical knowledge, providing examples supporting each concern.

16 56. That day CARED reviewed feedback about Plaintiff from Carlin
17 Miller, Hill, and Rue in addition to the feedback from Nguyen.

18 57. In Dr. Rue’s feedback, she stated “I agree with Carlin [Miller] that
19 [Plaintiff] is a detriment to the team and is a risk as far as patient safety. I do not
20 feel comfortable with him communicating accurate information to me, to
21 consultants, nursing staff or families. This potentially [a]ffects patient care in a
22 negative way. I would urge [yo]u to remove him from the service [*i.e.*, the
23 hospital].”

24 58. On February 13, 2019, after reviewing and discussing the feedback,
25 CARED moved Plaintiff to the next step of the remediation plan: Probation.

26 59. Plaintiff was placed on Probation on February 13, 2019.

27 60. As part of the “action plan” accompanying the Probation, CHCW
28 provided Plaintiff with help for the EMR system: “You will be shadowed in your

1 family medicine clinic by a faculty member in the next 1 mo, with special attention
2 paid to EMR efficiency.”

3 61. CARED also noted that Plaintiff had been offered additional trainings
4 on the EMR system, which he had refused.

5 62. On the afternoon of February 13, 2019, Dr. Powers emailed all
6 CHCW faculty to inform them of changes to Plaintiff’s curriculum. Plaintiff would
7 no longer participate in the Family Medicine Service (FMS); instead, he was to
8 perform extra clinic shifts. Dr. Powers also notified faculty that Plaintiff must
9 precept all patients with an attending doctor and that “the attending MUST see
10 every patient, and likely repeat the Hx [history], PE [physical examination], and
11 confirm the A&P [assessment and plan].”

12 63. On February 15, 2019, Laura Moss, WPHP Associate Medical
13 Director, notified Dr. Powers via email that Plaintiff “attended his scheduled
14 appointment with the (WPHP)...Based on this meeting with Dr. Plaintiff there was
15 no evidence of current impairment.”

16 64. Dr. Moss’s email also stated that Plaintiff would be “undergoing
17 additional evaluation from an outside provider to rule out an underlying medical
18 condition that could affect his ability to practice with reasonable safety to
19 patients.”

20 65. On February 26, 2019, CARED met and discussed Plaintiff’s
21 progress. CARED noted that Plaintiff had made progress with respect to
22 responding to messages, appropriate behavior with the nursing staff, and his
23 clinical case studies. Nonetheless, CARED noted there were still areas that needed
24 to improve.

25 66. On February 27, 2019, CARED provided its feedback and plan to
26 Plaintiff. The plan stated that Plaintiff would begin another FMS rotation on April
27 1, 2019, and “You must pass this rotation in order to continue your residency
28 training.

1 67. After receiving the feedback and plan, Plaintiff did not raise any
2 concerns about a medical or mental health impairment or request any
3 accommodations.

4 68. On April 17, 2019, CARED met to discuss Plaintiff's progress.
5 CARED noted that Plaintiff's "patient presentations continue to be scattered,
6 disorganized. Sometimes able to answer attending questions but seems to lack
7 common sense in ability to approach a patient case...Misses critical information in
8 H&P, differential diagnoses are shallow, and despite writing 2 cases about sepsis
9 criteria he could not identify that a COPD patient met criteria for sepsis."

10 69. CARED further noted that Plaintiff was not reviewing at least one
11 evidence-based article related to his patients' condition despite being required and
12 reminded to do so.

13 70. Nursing staff at Virginia Mason Hospital stated that Plaintiff "still put
14 in orders for blood draw, after this was already discussed and the plans were to not
15 do any lab draws. This upset the family and nursing staff."

16 71. Nora Kirschner provided feedback that Plaintiff's "knowledge is
17 below that of a medical student. Doesn't know acid base disorders or where to look
18 up about them."

19 72. Based on this feedback and discussion, CARED concluded that it had
20 "Ongoing grave concerns about decision making, organizational skills,
21 comprehension, and ability to complete tasks on time and follow a plan...If he
22 does not pass his FMS rotation, he will be discharged from the program."

23 73. After the meeting, Dr. Powers emailed the FMS attending doctors and
24 asked them "when you work with R1 Demetrios Vorgias in the next few weeks on
25 FMS, that you think very hard about whether he is meeting expectations or not, as
26 compared to other R1 residents. His final evaluations are very important in
27 assessing his progress."

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1 74. On April 18, 2019, via email, Dr. Powers asked Cynthia Morales,
2 WPHP Clinical Coordinator, for an update on Dr. Vorgias's evaluation.

3 75. The next day, Morales responded via email that "[b]ased on this
4 evaluation, there was no current identified impairment due to an underlying
5 medical condition."

6 76. Morales continued: "[w]e are recommending to [Plaintiff] enrollment
7 in monitoring with our organization in order to monitor underlying medical
8 conditions. We want to monitor these conditions in order to prevent future
9 impairment."

10 77. Morales stated "[w]e emphasize to all residency programs and
11 employers that they may continue their own disciplinary processes in tandem with
12 our own."

13 78. Morales did not identify any specific medical conditions or reasonable
14 accommodations.

15 79. On April 23, 2019, Dr. Midhuna Papazian provided feedback to Dr.
16 Powers. Dr. Papazian did rounds with Plaintiff to observe him with a patient and
17 assess how he was doing. Dr. Papazian reported that "[p]rior to my rounding with
18 him, we sat down and talked about the things we would ask the patient and he kept
19 missing the main points during the interview." She continued "I have rounded on
20 patients after [Plaintiff] has seen them and they seem confused about the
21 information that he shares with them. I don't feel like it's the right thing for patient
22 care for him to round on patients by himself."

23 80. Papazian concluded: "I know we all want Demetrios to succeed but I
24 really don't see how he is going to practice medicine successfully."

25 81. Plaintiff agrees that he failed to pass his FMS rotation during the
26 block beginning on October 15, 2018.

27 82. Plaintiff agrees that he failed to pass the FMS rotation for a second
28 time during the block beginning on February 4, 2019.

1 83. Plaintiff agrees that he failed to pass the FMS rotation for a third time
2 during the block beginning on April 1, 2019.

3 84. Powers observed Plaintiff and noted that among the list of his greatest
4 difficulties was “he had difficulty synthesizing information, he had difficulty
5 making an assessment that was accurate, and he had difficulty making a plan to
6 manage the medical conditions and with counseling patients as far as explaining
7 what the plan and options are.”

8 85. On April 24, 2019, CARED met to discuss Plaintiff’s progress and
9 determined that terminating his residency employment was necessary.

10 86. As the Program Director, Dr. Powers was the final decision-maker for
11 Plaintiff’s termination.

12 87. On April 26, 2019, Dr. Ravneet Dhaliwal, CHCW attending doctor,
13 provided feedback about Plaintiff’s progress, including that Plaintiff “[l]acks basic
14 skills” and her “[c]oncern for patient safety with appropriate transfer of care.”

15 88. On May 1, 2019, Plaintiff was informed of his termination from the
16 CHCW residency program.

17 89. Plaintiff was paid his entire salary under the contract for 30 days after
18 his termination.

19 90. Plaintiff’s termination notice provided a grievance procedure.

20 91. Plaintiff did not grieve his termination.

21 92. On May 7, 2019, Plaintiff first learned of his diagnosis with
22 Generalized Anxiety Disorder (GAD).

23 93. On May 8, 2019, Plaintiff shared the GAD diagnosis with Dr. Powers.

24 94. That same day, Plaintiff shared that he believed his GAD prevented
25 him from displaying his medical knowledge.

26 95. In the same email, Plaintiff made no mention of his ADHD.

27 96. Plaintiff asked Dr. Powers to allow him to retake an EKG exam that
28 he had failed.

1 97. Dr. Powers allowed him to retake the exam.

2 **IV. ISSUES OF FACT**

3 The following are the issues of fact to be determined by trial:

4 1. Was Plaintiff “disabled” under the ADA during his employment with
5 CHCW?

6 2. Was Plaintiff “disabled” under the WLAD during his employment
7 with CHCW?

8 3. Did CHCW have notice of Dr. Plaintiff’s alleged disability before it
9 terminated his employment as a first-year resident?

10 4. Did Plaintiff give CHCW notice of his disability and desire for a
11 reasonable accommodation?

12 5. Did Defendant retaliate against Plaintiff?

13 6. Was Dr. Plaintiff’s disability a substantial factor in CHCW’s decision
14 to terminate his employment?

15 7. Did CHCW and Dr. Plaintiff enter into an employment contract for a
16 fixed term?

17 8. Did CHCW materially breach a contract with Dr. Plaintiff by ending
18 his employment before June 24, 2019?

19 9. Did Plaintiff unreasonably fail to take advantage of work
20 opportunities available to him after he was terminated?

21 10. Did CHCW act maliciously, oppressively, or in reckless disregard of
22 Dr. Plaintiff’s rights when it discharged him or allegedly failed to accommodate
23 him, such that punitive damages are appropriate?

24 11. What amount of compensatory damages is Dr. Plaintiff owed under
25 the WLAD or ADA?

26 12. What amount of punitive damages, if any, is Dr. Plaintiff owed under
27 the ADA?

13. If CHCW materially breached Plaintiff's contract, what are his contract damages?

V. ISSUES OF LAW

The following are the issues of law to be determined by the Court:

1. Is Plaintiff entitled to reinstatement or front pay in lieu of?
2. What is the correct measure of front pay (ADA)? *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 846 (2001).
3. Is Plaintiff entitled to back pay?
4. If awarded by the jury, the correct amount of punitive damages and/or compensatory in light of the cap under 42 U.S.C. § 1981a(b) (ADA claims only)?

VI. EXHIBITS

The following exhibits may be received into evidence, if other admissible, without further authentication, once determined that each is what it purports to be:

PLAINTIFF'S EXHIBITS

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
1.	CWFM Residency Program Resident Handbook	Not Provided; Produced as ECF No. 71-1	Pre-Admit	Y	
2.	CWFM "resident Contract in Family Medicine."	Not Provided; Produced as ECF No. 71-2	Pre-Admit (formerly 205)	Y	
3.	CWFM Residency Verification of Graduate Medical Education & Training	Not Provided; Produced as ECF No. 71-3	Pre-Admit	Y	

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
4.	December 11, 2019 letter from Dr. Moss, MD and C. Morales, (WPHP)	Not Provided; Previously produced as ECF No. 71-4		Y	FRE 802; 602; 701. <i>See</i> ECF No. 99 at 5-6 and ECF No. 110 at 1-3.
5.	April 19, 2019 email from C. Morales to Dr. Powers	Not Provided; Produced as ECF No. 71-5	Pre-Admit (formerly 235)	Y	
6.	Undated Letter from Dr. Kelly Cornett	Not Provided; Produced as ECF No. 71-6		N	FRE 402, 403, 802, 901.
7.	Plaintiff Demetrios Plaintiff's Supplemental Initial Disclosure re: Damages	Not Provided; Previously produced as ECF No. 71-7		Y	FRE 602; 702, 703, 802; 1002
8.	Plaintiff's FRCP 26 Initial Expert Witness Disclosure & Report of Dr. Scott Whitmer	Not Provided; Previously produced as ECF No. 71-8		Y	FRE 702, 703, 802. <i>See</i> ECF No. 70; No. 99 at 13-15; No. 110 at 8

Ex No.	Description	Bates No.	Admit	Auth. Admitted	Admiss. Disputed
9.	Seven Letters of Recommendation	Not Provided; Previously produced as ECF No. 71-9		N	FRE 402, 403, 702, 703, 802. ECF No. 70. <i>See</i> ECF No. 99 at 8; ECF No. 110 at 4-5.
10.	Medical Residency Jobs Plaintiff Applied to via Medical Residency Portal	Not Provided; Produced as ECF No. 71-10		Y	FRE 802.
11.	St. George's University Medical Student Performance Evaluation	Not Provided; Produced as ECF No. 71-11		N	FRE 402, 403, 802, 901.
12.	ACGME Institutional Requirements	Not Provided; Produced as ECF No. 71-12		N	FRE 403, 802, 901.
13.	ACGME Program Requirements for Graduate Medical Education in Family Medicine	Not Provided		N	FRE 403, 802, 901.

DEFENDANT'S EXHIBITS

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
200.	2016 Resident Handbook	CHCW 000001-10		N	FRE 403; Relevance; Foundation
201.	ACGME Program Requirements	CHCW 000011-20		N	FRE 403; Relevance; Foundation; Incomplete
202.	Resident Professionalism Agreement and Accountability Policy (4/22/18)	CHCW 000258-259		N	FRE 802 – Hearsay; FRE 403; Relevance; Foundation
203.	Standards of Behavior Agreement (6/27/18)	CHCW 000189		N	FRE 802 – Hearsay; FRE 403; Relevance; Foundation
204.	10/1/2017 Plaintiff Residency Application materials	CHCW 000228-243; 255-257		N	
205.	R 1 FMS Evaluation	CHCW 000126-135		N	FRE 802 – Hearsay
206.	EKG Selective Evaluation	CHCW 000162		N	FRE 802 – Hearsay
207.	Resident Individual Learning Plan	CHCW 0000146-156		N	FRE 802 – Hearsay
208.	7/19/2018 Self Evaluation	CHCW 000097-98		N	FRE 802 – Hearsay

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
209.	9/17/18 Email from J. Gay	CHCW 000044		N	FRE 802 – Hearsay; FRE 403; Misleading
210.	10/1/2018 Email from T. Mark	CHCW 000045-46		N	FRE 802 – Hearsay; FRE 403; Misleading
211.	Resident Individual Learning Plan	CHCW 000047-50		N	Relevance
212.	CARED Committee Description	PLAINT IFF 00039-45		N	FRE 802 – Hearsay; FRE 403; Misleading
213.	10/23/2018 CARED Meeting re Constructive Citation	CHCW 000051-52		N	FRE 802 – Hearsay; FRE 403; Misleading
214.	10/23/2018 New Innovations Evaluation by Dr. Hill	PLAINT IFF 000080-83		N	FRE 802 – Hearsay; FRE 403; Misleading
215.	10/24/2018 Quarterly Review / Constructive Citation	CHCW 000102-103		N	FRE 802 – Hearsay
216.	11/4/2018 Email from Dr. Bauman	CHCW 000055-56		N	FRE 802 – Hearsay
217.	November 14, 2018 Email from Dr. Miller	CHCW 000053-54		N	FRE 802 – Hearsay

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
218.	2018-2019 Rotation Comparison	CHCW 000184-186		N	FRE 802 – Hearsay; FRE 403; Misleading
219.	2018 American Board of Family Medicine In Training Examination Performance Report	CHCW 000167		N	FRE 802 – Hearsay; Foundation; Misleading
220.	1/23/2019 Consequential Citation by CARED Committee	CHCW 000058-60		N	FRE 802 – Hearsay; FRE 403; Misleading
221.	1/23/2019 Quarterly Review	CHCW 000163-164		N	FRE 802 – Hearsay; FRE 403; Misleading
222.	1/28/2019 Email from Dr. Hill to faculty re Consequential Citation	CHCW 000057		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial
223.	2/4/2019 Email from Dr. Moran	CHCW 000061-62		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial
224.	2/10/2019 New Innovations Review by Dr. Rue	PLAINT IFF 000210-213		N	FRE 802 – Hearsay; FRE 403; Misleading; Prejudicial

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
225.	2/13/2019 Pre-reading for CARED Meeting	CHCW 000066- 71		N	FRE 802 – Hearsay; FRE 403; Misleading
226.	2/13/2019 CARED Meeting regarding probation	CHCW 000072- 75		N	FRE 802 – Hearsay; FRE 403; Misleading
227.	CARED to Dr. Plaintiff/Prob ation	CHCW 000091- 94		N	FRE 802 – Hearsay; FRE 403; Misleading
228.	2/13/2019 Email from Dr. Lancaster	CHCW 000064- 65		N	FRE 802 – Hearsay; FRE 403; Misleading
229.	2/13/2019 Email from Dr. Powers	CHCW 000076		N	FRE 802 – Hearsay; FRE 403; Misleading
230.	2/15/2019 Letter from Dr. Moss to Dr. Powers	CHCW 000077		N	FRE 802 – Hearsay
231.	2/26/2019 CARED Meeting regarding remaining on Probation	CHCW 000165- 166		N	FRE 802 – Hearsay; FRE 403; Misleading
232.	March 2019 “Clinical Question” emails with Dr. Powers	CHCW 000206- 227		N	FRE 802 – Hearsay; FRE 403; Misleading

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
233.	4/17/ 2019 CARED Meeting re Probation	CHCW 000078- 79		N	FRE 802 – Hearsay; FRE 403; Misleading
234.	4/23/2019 Emails re “Vorgias FMS Evaluations”	CHCW 000084		N	FRE 802 – Hearsay; FRE 403; Misleading
235.	4/23/2019 Email from Dr. Papazian	CHCW 000080		N	FRE 802 – Hearsay; FRE 403; Misleading
236.	4/24/2019 CARED Meeting re termination	CHCW 000087- 88		N	FRE 802 – Hearsay; FRE 403; Misleading
237.	4/24/2019 Quarterly Review	CHCW 000089- 92		N	FRE 802 – Hearsay; FRE 403; Misleading; Foundation
238.	4/26/2019 Email from Dr. Dhaliwal	CHCW 000085- 86		N	FRE 802 – Hearsay
239.	5/1/2019 “On the Fly Resident Evaluation” by Dr. Dhaliwal	VORGI AS 000186		N	FRE 802 – Hearsay; FRE 403; Misleading; Foundation
240.	5/8/2019 Email from Dr. Powers to Plaintiff	CHCW 000095- 96		N	FRE 802 – Hearsay

Ex. No.	Description	Bates Nos.	Admit	Auth. Disputed	Admiss. Disputed
241.	List of jobs Plaintiff applied to after separation of employment	PLTF 001155		N	FRE 403; Incomplete
242.	2017 Resume	CHCW 000261		N	
243.	2021 Resume	PLTF 000145-147		N	
244.	November 3, 2020 EEOC Dismissal Notice	VORGI AS 000254-255		N	FRE 802 - Hearsay; FRE 403; Misleading; Foundation
245.	Shelly Lewis, MA, CRC, CLCP, ABVE/D CV Expert Report dated November 4, 2021	11/5/, 2021		N	FRE 802 – Hearsay; Relevance
246.	Shelly Lewis, MA, CRC, CLCP, ABVE/D CV	11/5/2021 1 2021		N	FRE 802 – Hearsay; Relevance

Other than for impeachment purposes, the only exhibits admitted at trial will be exhibits identified herein or on a supplemental list filed at least 14 days before trial, or at such earlier date as may have been set by the Court, which supplemental list shall bear counsel's certificate that opposing counsel has had an opportunity to examine the exhibits.

Objections to exhibits, except as to relevancy, must be heard prior to trial.

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VII. **WITNESSES**

A. Plaintiff's Witnesses:

1. Demetrios Vorgias
2. Rebecca Ward
3. Kelly Cornett
4. Tess Ish-Shalom
5. Mark Bauer
6. Ed Prasthofer
7. Douglas E. Coon
8. Judith Harvey
9. Caitlin C.D. Hill
10. Carlin Miller
11. Cynthia Morales
12. Scott Whitmer
13. Ben E. Kitchens
14. Sagar Vijapura
15. Brandon Isaacs

B. Defendant's Witnesses:

1. Demetrios Vorgias
2. Michalyn Powers
3. Katina Rue
4. Caitlin Hill
5. David Bauman
6. Ragina Lancaster
7. Laura McClintock
8. Carlin Miller
9. Patrick Moran

10. Dominick Nguyen

11. Ravneet Dhaliwal

12. Shelley Lewis

Other than for rebuttal purposes, no witnesses may be called unless listed above.

VIII. **RELIEF SOUGHT**

Injunctive relief, including reinstatement of Plaintiff, to the residency program at Community Health of Central Washington and/or monetary damages for unlawful discrimination, attorney's fees, costs, and punitive damages.

IX. **TRIAL**

The parties estimate seven (7) days trial time. The parties stipulate and agree to the following: no stipulation reached by the parties. Proposed instructions and trial memoranda shall be filed in accordance with the Court's scheduling order. *See* ECF No. 89 and ECF No. 113.

X. **ACTIONS BY THE COURT**

The Court has made the following rulings:

1. The Court granted Defendant's motion to exclude portions of Plaintiff's expert's testimony and report. *See* ECF No. 70. The Court denied Defendant's request for an expert examination. *See* ECF No. 68.

2. The Court denied cross-motions for summary judgment filed by both parties as to all claims. ECF No. 69. The Court also denied reconsideration. ECF No. 87.

3. The Court made the following rulings on Plaintiff's Motion in Limine, ECF No. 97:

- a. Request #1: **RESERVE RULING until the time of trial**
- b. Request #2: **GRANT**
- c. Request #3: **GRANT**
- d. Request #4: **GRANT**

1 e. Request #5: **RESERVE RULING until the time of trial**

2 f. Request #6: **GRANT**

3 4. The Court made the following rulings on Defendant's Motion in
4 Limine, ECF No. 99:

5 a. Request #1: **RESERVE RULING until the time of trial**

6 b. Request #2: **RESERVE RULING until the time of trial**

7 c. Request #3: **RESERVE RULING until the time of trial**

8 d. Request #4: **DENY**

9 e. Request #5: **RESERVE RULING until the time of trial**

10 f. Request #6: **RESERVE RULING until the time of trial**

11 g. Request #7: **GRANT**

12 h. Request #8: **GRANT**

13 i. Request #9: **GRANT**

14 j. Request #10: **GRANT**

15 k. Request #11: **GRANT**

16 l. Request #12: **GRANT**

17 m. Request #13: **RESERVE RULING until the time of trial**

18 n. Request #14: **GRANT**

19 o. Request #15: **GRANT**

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1 It is **ORDERED** that the foregoing constitutes the Pretrial Order in the case
2 and that, upon the filing hereof, all pleadings pass out of the case and are
3 superseded by this Order. This Order may be amended by consent of the parties
4 and approval by the Court or by the Court to prevent manifest injustice.

5 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
6 this Order and provide copies to counsel.

7 **DATED** this 9th day of September 2022.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

13 Stanley A. Bastian
14 Chief United States District Judge
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